

In the Matter of THE PEOPLES GAS LIGHT AND COKE COMPANY and
CHICAGO BY-PRODUCT COKE COMPANY and UNITED MINE WORKERS
OF AMERICA, DISTRICT 50, AFFILIATED WITH THE CONGRESS OF INDUS-
TRIAL ORGANIZATIONS

Case No. R-1402.—Decided October 11, 1939

Gas and Gas By-Products Production Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; controversy as to appropriate unit; majority status disputed by Company and by rival organization; contract entered into with rival organization after filing of petition, recognizing it as bargaining representative of its members, no bar to investigation and determination of representatives—*Units Appropriate for Collective Bargaining:* all production and maintenance employees excluding supervisory and clerical employees, first-aid men and telephone operators, no controversy as to; controversy as to watchmen; watchmen excluded from unit of production and maintenance employees at request of one of labor organizations involved; watchmen held to be separate appropriate unit—*Representatives:* proof of choice; evidence introduced shows duplication of membership, and substantial membership by both labor organizations in unit of production and maintenance employees; membership of 19 out of 20 watchmen in one of labor organizations not presumed to indicate wish of watchmen for representation by it as separate unit, since at time of membership, Union was organizing all employees, including watchmen, as single unit—*Elections Ordered*

Mr. Hyman A. Schulson, for the Board.

Pope & Ballard, by *Mr. Ernest S. Ballard* and *Mr. Beverly B. Vedder*, of Chicago, Ill., for the Company.

Mr. Ben Meyers, of Chicago, Ill., for the United.

Mr. D. D. Carmell, of Chicago, Ill., for Local 18007.

Mr. David Findling, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On January 28, 1939, United Mine Workers of America, District 50, affiliated with the Congress of Industrial Organizations, herein called the United, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition, and on May 26, 1939, an amended petition, alleging that a question affecting commerce had arisen concerning the representation of employees at the Crawford Production Station plant of the Peoples Gas Light and Coke Com-

pany, Chicago, Illinois, herein called the Company,¹ and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 19, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On May 26, 1939, the Regional Director issued a notice of hearing, and on June 3, 1939, a notice of postponement of hearing, copies of both of which were duly served upon the Company, upon the United, and upon Gas Workers Union, Local 18007, affiliated with the American Federation of Labor, herein called Local 18007, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notices, a hearing was held on June 12, 13, and 14, 1939, at Chicago, Illinois, before Horace A. Ruckel, the Trial Examiner duly designated by the Board. The Board, the Company, the United, and Local 18007 were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. After the hearing all of the parties filed briefs with the Board which have been considered.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Peoples Gas Light and Coke Company is an Illinois public utility corporation engaged in the "production, purchase, transmission, distribution, and sale of gas for residential, commercial, industrial, and municipal purposes in the City of Chicago." It also sells coke and other byproducts of coal, and appliances to promote the development of its gas business.² It maintains five gas-production plants, the largest of which is the Crawford Production Station plant, at which the Company manufactures, in addition to gas, coke as the principal byproduct, and tar, coke breeze, light oils, and

¹ Chicago By-Product Coke Company, which is also named in the caption, operates this plant as agent of the Company. See Section I, *infra*.

² The record does not indicate the source, or the extent of sales, of these appliances.

ammonium sulphate as other byproducts. This case is concerned only with this plant, which is operated under the Company's direction and at its risk and expense by the Chicago By-Product Coke Company, a wholly owned subsidiary, as its agent.³

In 1938, 505,380 tons of coal valued at \$968,944.23, 568,013 gallons of oil valued at \$35,991.34, 5,656.40 tons of sulphuric acid valued at \$55,165.02, and 1,976,951 pounds of liquid calcium chloride valued at \$7,408.27, were used in operations at the Crawford Production Station plant.⁴ Approximately 72 per cent of the coal, 100 per cent of the oil and liquid calcium chloride, and 45 per cent of the sulphuric acid, were shipped to the Crawford Station plant from points outside the State of Illinois.

All of the gas produced at the Crawford Production Station plant is delivered to the Peoples Gas Light and Coke Company for mixture with natural gas, before general distribution to consumers in Chicago.⁵ During 1938, the Company sold 494,760,956 therms of gas resulting in a gross revenue of \$37,436,472.58, of which 290,615,174 therms were sold to its industrial and commercial consumers to be used for heat, power, and the manufacture and preparation of finished products.⁶ These consumers, which include every major industrial and commercial firm in Chicago, are entirely dependent upon the Company as a source of gas and, in the course of their business, cause substantial amounts of raw materials used in manufacturing to be purchased and transported in interstate commerce, and substantial amounts of finished goods to be sold and transported from their respective plants to other States.

Among other gas consumers of the Company are 6 railroads, 5 bus companies, 1 boat company, and 27 trucking companies, all engaged in interstate commerce; the Illinois Bell Telephone Company, Western Union Telegraph Company, Postal Telegraph Company, 24 newspapers, the Municipal Airport, and the United States Government.⁷

³ The Chicago By-Product Coke Company is engaged in no business other than as such agent. Its balance sheet for the year 1938 shows no assets and liabilities, it prepared no profit and loss statement, and apparently maintained no separate accounting records. The Chicago By-Product Coke Company has no independent labor policy of its own, and all communications with reference to the question of representation in this case were addressed to, and all conferences were had at the main offices of, the Peoples Gas Light and Coke Company.

⁴ These materials were purchased both by the Chicago By-Product Coke Company as agent, and by the Company, directly.

⁵ It appears that each therm of gas produced is mixed with approximately nine therms of natural gas. The record does not indicate how much gas was produced at the Crawford Production Station plant in 1938. However, in 1935, the last year for which such figures are given, this plant produced 46,086,822 therms of gas out of a total of 46,587,985 therms produced at all plants.

⁶ In 1938, the Company had 778,909 domestic consumers and 44,375 industrial and commercial consumers.

⁷ The Government uses the gas at post offices, lighthouses, the customs bureau, and Department of Agriculture offices in Chicago. The parties stipulated that a labor dispute between the Company and its employees, interrupting the Company's operations, would seriously affect the flow of vast quantities of raw materials and finished products in

The Chicago By-Product Coke Company, as agent, sells all of the coke, coke breeze, tar, light oils, and ammonium sulphate produced at the Crawford Station. In 1938, it sold 275,347.89 tons of coke, resulting in a gross revenue of \$1,988,030.68, approximately 12 per cent of which was shipped to other States, and 6,564.67 tons of ammonium sulphate, resulting in a gross revenue of \$147,700.18, approximately 87 per cent of which was shipped to other States.⁸

II. THE ORGANIZATIONS INVOLVED

United Mine Workers of America, District 50, is a labor organization affiliated with the Congress of Industrial Organizations. It admits to its membership all production and maintenance employees at the Crawford Production Station plant of the Company, except supervisory and clerical employees, and watchmen.

Gas Workers Union, Local 18007, is a labor organization affiliated with the American Federation of Labor. It also admits to its membership all production and maintenance employees at the Crawford Production Station plant of the Company, except supervisory and clerical employees, but including watchmen.

III. THE QUESTION CONCERNING REPRESENTATION

On January 13, 1939, the United, claiming to represent a majority of the Company's production and maintenance employees at the Crawford Production Station plant, requested the Company to bargain with it as the exclusive representative of such employees.⁹ The Company refused to do so, stating that Local 18007 also claimed to be the exclusive representative of these employees, and that it had no proof that the United represented them.

As stated above, the petition herein was filed on January 28, 1939. On January 31, 1939, the Chicago By-Product Coke Company entered into a written agreement with Local 18007 covering the wages, hours, and conditions of employment of the employees at the Crawford Production Station plant "who are members of said Gas Workers Union" for a term from February 1, 1939, to April 30, 1944. Such an agreement, particularly where entered into under the foregoing

interstate commerce and would in a short time paralyze the operations of many of the instrumentalities of interstate and foreign commerce in and about Chicago.

⁸ Among its coke customers are 32 firms which are engaged in interstate commerce.

⁹ This request was contained in a letter written on the stationery of the United, in which it asserted that Local Union 12052, District 50, United Mine Workers of America, was the duly designated representative of the Company's employees at the Crawford Production Station plant. At the hearing, the parties stipulated that Local No. 12052 "comprising the gas and by-products coke companies" located in Chicago, Illinois, was chartered on June 29, 1937. As has been stated, the petition herein was filed in the name of the United; the proceedings herein were also conducted in the name of the United, and at the hearing, the United sought to establish its designation as representative of the employees of the Company. See Section VI, *infra*.

circumstances, does not preclude the Board from investigating and determining representatives in this case.¹⁰

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States; and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The parties stipulated at the hearing that all production and maintenance employees at the Crawford Production Station plant, excluding supervisory and clerical employees, first-aid men, and telephone operators, constitute an appropriate unit for purposes of collective bargaining.

The only question raised concerns the 20 watchmen employed by the Company, the United contending that these men should be excluded from the bargaining unit, and Local 18007 opposing their exclusion. It has been our practice not to include watchmen within a bargaining unit composed essentially of production and maintenance employees if objection thereto is raised by a participating labor organization.¹¹ We shall exclude the watchmen from the unit.

We find that the production and maintenance employees of the Company at the Crawford Production Station plant, excluding supervisory and clerical employees, first-aid men, telephone operators, and watchmen, constitute a unit appropriate for purposes of collective bargaining, and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuate the policies of the Act.

The watchmen employed by the Company patrol the grounds of the Company, guard the gates and perform similar functions. We see no reason why they cannot satisfactorily function as a separate unit for collective bargaining, if they so desire. Moreover, of the 20 watchmen involved, 19 have indicated their desire to be represented

¹⁰ See *Matter of White Sewing Machine Corporation and United Electrical, Radio and Machine Workers of America, Local 721 (C. I. O.)*, 10 N. L. R. B. 802; *Matter of Hirsch Shirt Corporation and United Garment Workers of America (affiliated with the A. F. of L.)*, 12 N. L. R. B. 553.

¹¹ See *Matter of Plankinton Packing Company and Packing House Workers Organizing Committee on Behalf of Local 681 of the United Packing House Workers of America*, 5 N. L. R. B. 813; *American Radiator Company and Local No. 1770 Amalgamated Association of Iron, Steel & Tin Workers of North America, C. I. O.*, 11 N. L. R. B. 1127.

by one of the labor organizations here involved,¹² and to hold that they do not by themselves constitute an appropriate unit would virtually deprive them of the opportunity for collective action and representation.

We find that the watchmen of the Company at the Crawford Production Station plant constitute a unit appropriate for purposes of collective bargaining, and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuate the policies of the Act.

If Local 18007 is designated by a majority of the employees in the unit of production and maintenance employees, and in the unit of watchmen, which we have found appropriate, it is free, of course, to negotiate a collective bargaining agreement combining watchmen with production and maintenance employees into a single bargaining unit, if it so desires.

VI. THE DETERMINATION OF REPRESENTATIVES

The Company's pay roll for the period from January 16 to January 31, 1939, which was introduced in evidence, contains 324 employees in the unit of production and maintenance employees which we have found appropriate.¹³ At the hearing, the United introduced in evidence 130, and Local 18007, 310 authenticated membership cards or petitions, signed by persons within this unit. Analysis discloses that 127 employees signed cards or petitions of both unions. Approximately 99 of the cards offered by the United were signed in April and May 1939, and the balance in March and April 1937.¹⁴ Approximately 33 of the cards or petitions offered by Local 18007 were signed in June 1939 and the balance between September 1938 and April 1939. Under the circumstances, we believe that the question which has arisen concerning the representation of these employees of the Company can best be resolved by the holding of an election by secret ballot.¹⁵

¹² See Section VI, *infra*.

¹³ While the Company's pay roll lists 329 employees in the unit of production and maintenance employees, the United and Local 18007 agreed at the hearing to exclude 5 men on the ground that they were supervisory employees. The Company made no objection. These men are John Lawrence, Peter Maloney, John Ripkey, Louis Ippolito, and Joe Keough.

¹⁴ The cards signed in March and April 1937 were membership cards in the Amalgamated Association of Iron, Steel & Tin Workers of North America, also affiliated with the Congress of Industrial Organizations. An organizer for the United testified that the employees who signed these cards were informed that they would be turned over to a local which was to be chartered by the United, and that these cards were, in fact, later turned over to the United. He also testified that these membership cards were used only because the United had not had an opportunity to provide its own membership cards at that time.

¹⁵ See *Matter of The Cudahy Packing Company and United Packinghouse Workers of America, Local No. 21 of the Packinghouse Workers Organizing Committee, affiliated with the Congress of Industrial Organizations*, 13 N. L. R. B. 526.

The Company's pay roll for the period from January 16 to January 31, 1939, also contains 20 employees in the unit of watchmen which we have found appropriate. At the hearing, Local 18007 introduced in evidence 19 authenticated membership cards or petitions signed by persons within this unit, of which at least 17 were signed in January 1939. However, at the time these cards were signed, Local 18007 was organizing all of the Company's employees including the watchmen as a single unit, and we shall not presume that the watchmen by their membership have indicated that they would wish to be represented by Local 18007 as a separate unit. Under the circumstances, we believe that the question which has arisen concerning the representation of watchmen of the Company can best be resolved by the holding of an election by secret ballot in which the watchmen shall vote to determine whether or not they wish to be represented by Local 18007.

We are also of the opinion that the use of the current pay roll as the basis for eligibility to vote in the elections will best effectuate the policies of the Act. We shall, accordingly, direct that all persons in the appropriate units whose names appear on the Company's pay roll for the pay-roll period immediately preceding the date of our Direction of Elections herein, including employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, and excluding those who have since quit or been discharged for cause, shall be eligible to vote.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees at the Crawford Production Station plant of the Peoples Gas Light and Coke Company, Chicago, Illinois, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.
2. The production and maintenance employees at the Crawford Production Station plant of the Company, excluding supervisory and clerical employees, first-aid men, telephone operators, and watchmen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.
3. The watchmen employed at the Crawford Production Station plant of the Company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with the Peoples Gas Light and Coke Company, Chicago, Illinois, separate elections by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the Company who fall within each of the groups described below :

(1) All production and maintenance employees at the Crawford Production Station plant of the Company, whose names appear on the Company's pay roll for the pay-roll period immediately preceding the date of this Direction, including employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding supervisory and clerical employees, first-aid men, telephone operators, and watchmen, and employees who have since quit or been discharged for cause, to determine whether they desire to be represented for the purposes of collective bargaining by United Mine Workers of America, District 50, affiliated with the Congress of Industrial Organizations, or by Gas Workers Union, Local 18007, affiliated with the American Federation of Labor, or by neither ;

(2) All watchmen employed at the Crawford Production Station plant of the Company, whose names appear on the Company's pay roll for the pay-roll period immediately preceding the date of this Direction, including watchmen who did not work during such pay-roll period because they were ill or on vacation, and watchmen who were then or who have since been temporarily laid off, but excluding watchmen who have since quit or been discharged for cause, to determine whether or not they desire to be represented for the purposes of collective bargaining by Gas Workers Union, Local 18007, affiliated with the American Federation of Labor.